

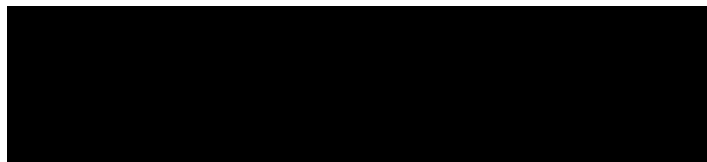
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services



FILE: EAC 02 264 50740 Office: VERMONT SERVICE CENTER

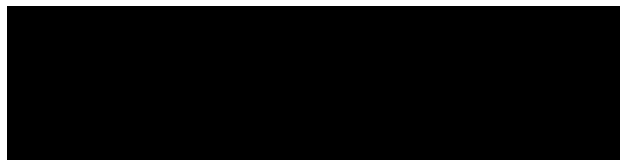
Date: OCT 20 2004

IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is the mission agency of the Southern Baptist Convention. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a programmer analyst III, customer and collaborative systems. The director determined that the petitioner had not established that the beneficiary's position qualifies as a religious occupation.

On appeal, counsel argues that the director failed to give sufficient consideration to the religious nature of the beneficiary's work.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The decision rests on the issue of whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

Professional capacity means an activity in a religious vocation or occupation for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required.

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The petitioner asserts that the position is professional, i.e., that it requires a bachelor's degree, and that the beneficiary possesses such a degree. The director did not dispute those elements of the petitioner's claim. The record shows that the beneficiary is ordained as a minister, but the petitioner has not claimed that the beneficiary has been, or will be, performing the duties of ordained clergy in his role as a programmer analyst.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation at 8 C.F.R. § 204.5(m)(2) states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

Citizenship and Immigration Services therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

While the determination of an individual's status or duties within a religious organization is not under the purview of Citizenship and Immigration Services (CIS), the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

At the time of filing, the beneficiary was working for the petitioner under an H-1B nonimmigrant visa (alien in a specialty occupation). The petitioner's employment manager, Theodore A. Powitz, describes the beneficiary's work:

In order to continue its good works and to fulfill its mission, the [petitioner] has established an interactive Internet and web-based system. The system supports [the petitioner's] missionaries and organizations throughout the world and has become an essential part of this organization. This function is performed in the home office by the ITG (Information Technology Group) which has over 70 employees. In order to develop, manage and maintain the system, [the petitioner] requires the services of a Manager, Web-based Services. . . .

In September of 2000, [the beneficiary] began work with the [petitioner] as "Manager-Web Based Services." [The beneficiary's] staff is heavy with others of a similar academic and religious service background, including ordained ministers like himself, religious studies degree holders and [the petitioner's] missionaries.

[The beneficiary's] work at [the petitioning entity] has focused heavily on several projects which broadcast the [petitioner's] international Christian message worldwide on the web, and which advances the Christian mission work of the [petitioner] on an individual missionary and institutional level. For example, [the beneficiary] created the electronic magazine, TConline.org, which tells the current story of international mission Christians. He has also developed and contributed to an electronic course especially for use by individual international missionaries devoted to personal growth and attitudes, knowledge and skill in relating to others in the cross-cultural context. Another important and similar mission project is [the beneficiary's] contributions to the church planting movement's interactive electronic course. This course teaches strategy development for expansion of church "planting," or establishment, in specific areas and circumstances.

At a broader mission level, [the beneficiary] has developed and contributed to a web based information exchange project which facilitates worldwide communication by missionaries in the field. This facility allows missionaries all over the world to report, categorize, prioritize, publish and monitor the status of unfunded needs projects. The centralization of this important function by [the beneficiary] constitutes a substantial advance of the [petitioner's] mission management task.

The director requested further evidence to establish that the beneficiary's "job duties are traditional religious functions above those performed routinely by other members" of the petitioning denomination. In response, [REDACTED] indicates that, due to a restructuring, the beneficiary's title has changed from "Manager, Web-based Services" to "Programmer/Analyst III, customer and collaborative systems." [REDACTED] asserts that the beneficiary performs "the same functions and assignments as in his previous assignment."

[REDACTED] lists 13 "technical duties" performed by the beneficiary, such as "[d]evelops and maintains ongoing customer relationship," "[p]rovides interdepartmental coordination in defining and deploying application architectures," and "[r]eviews end user documentation and makes recommendations for changes." This description of the beneficiary's duties, occupying more than two full pages, mentions religious functions only infrequently and sometimes indirectly (such as non-specific references to "content"). [REDACTED] asserts that "[t]he technical skills required to perform the above-listed tasks must be supplemented by theological training sufficient to ensure competency in creating and refining web content that is suited to the special needs of the [petitioner] and the Southern Baptist denomination."

[REDACTED] lists several projects in which the beneficiary has participated; for instance, he states that the beneficiary "was instrumental in designing and providing resources to produce seven courses of the International Centre for Excellence in Leadership . . . used to train missionary workers." The content of these projects is clearly religious in nature, but [REDACTED] does not indicate that the beneficiary was personally responsible for that content. Rather, it appears that the beneficiary provided the technical expertise (involving databases, platforms, etc.) necessary to deliver content developed by others.

The director had requested lists of the petitioner's salaried religious and non-religious employees. The beneficiary is the only programmer analyst listed among the religious employees; the list of non-religious employees lists 16 programmer analysts.

The director denied the petition, stating that the petitioner had failed to establish that the beneficiary's work relates to a traditional religious function of the denomination, rather than the primarily secular task of

providing web-based service support. On appeal, counsel states that the director's determination "is fundamentally mistaken," and that the position is not "a routine information/internet technology sort of position."

Counsel observes that "the Regulation [8 C.F.R. § 204.5(m)(2)] only requires that the activity 'relate to' a traditional religious function in order to be a 'religious occupation.'" There is, nevertheless, a limit to the extent to which a given activity can "relate to" a traditional religious function. For example, writing and publishing religious tracts would generally constitute a traditional religious function. Publication of the tracts would not be possible unless the tracts were printed. It does not follow, however, that running the printing press or binding the books "relate to" that traditional religious function in any meaningful way contemplated by the regulation.

Counsel cites a District Court decision (which is not binding on Citizenship and Immigration Services in relation to other proceedings) in which a church music director was found to work in a religious occupation. The judge's decision rested, in part, on the fact that the alien was responsible for the content presented. In the present proceeding, the petitioner has shown only that the beneficiary is responsible for the *presentation* of that content.

Counsel discusses elements of the job duties as described by the petitioner, and states that, within this itemized list, "[i]tems 1 and 2 operate together and emphasize the subjective, creative and religious aspects of this position." Those items, with counsel's emphasis, are as follows:

1. Lead the development of all IMB internet and intranet products and services in response to customer requirements and IMB core value objectives with appropriate web solutions in a team production environment.
2. Collaborate with IMB managers, directors and executives to formulate clear IMB internet/intranet strategies, goals, and criteria for developing successful web based products and services.

Counsel states "[i]t is clear that the 'development' of products and services for the missionaries in the field and the overall missionary service of 'IMB core value objectives' is an occupation 'related to' the clearly traditional religious function of missions, broadcasting and teaching. It is clear because the position not only 'relates to' those traditional religious functions, it executes them directly."

Contrary to counsel's claim, it is not "clear" that the above items endow the beneficiary's work with a distinctly religious character. The very development of web-based products and services is not inherently religious. Obviously, any competent web designer will take the requirements and objectives of the customer or client into account; this applies whether the website is for a church or an online retailer. The "strategies" and "goals" are not self-evidently religious; this could simply refer to goals regarding the structure of the site, ease of use, and so on, rather than the petitioner's goal of missionary evangelism.

Counsel states that "a cursory review of sample products produced by this position reveals the fundamentally religious nature of the position." It is undeniably true that the products such as the CompassionNet Prayer Web Site are filled with religious *content*, but this begs the question of the *source* of that content. If the beneficiary is personally responsible for creating the web sites *and the information within them*, then his duties certainly have a religious cast to them. If, on the other hand, other individuals prepare the content, and the beneficiary's job is simply to arrange and present that material in an attractive and user-friendly format,

then the beneficiary's own work on that project is not inherently religious, any more than similar work for a hair salon's web site would be inherently tonsorial.

While the beneficiary surely works with religious *subject matter*, the nature of his work, as described by the petitioner, appears to focus on technical aspects of web design and presentation. The fact that the beneficiary is also an ordained minister is of minimal relevance, because the beneficiary is clearly not performing the duties of ordained clergy in his current job. Ordination does not, by any means, create a permanent entitlement to immigration benefits. Furthermore, counsel's observation that the position existed before the beneficiary took that position does not demonstrate its status as a traditional religious function. The petitioner has indicated that it employs over a dozen programmer analysts, and the petitioner itself labels all of them (with the exception of the beneficiary) as non-religious employees. Upon consideration, we concur with the director's finding that the petitioner has not shown the beneficiary's occupation to be a qualifying religious occupation.

Beyond the decision of the director, we note another factor that potentially affects the beneficiary's eligibility. The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on August 14, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a programmer analyst (or manager of web-based services) throughout the two years immediately prior to that date. The term "continuously" has been interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

On April 25, 2003, the director requested "copies of the beneficiary's Income Tax Return Statements for 2002 and 2001 to show how the beneficiary supported him/herself while in the United States." In response, the petitioner submitted a copy of the beneficiary's 2000 joint income tax return (which the director had not requested), but not the 2001 or 2002 returns specified in the request. The petitioner did not explain this omission. By April 25, 2003, the filing deadline had passed for 2002 individual tax returns. On his 2000 return, the beneficiary listed his occupation as "manager."

The 2001 and 2002 returns are material to the petition, because the statute and regulation requires that the beneficiary has performed the religious work *continuously* (i.e., without other employment) throughout the two-year qualifying period. The petitioner has provided copies of the Forms W-2 that it issued to the beneficiary during the qualifying period, but these documents do not concern (and thus cannot rule out) disqualifying outside employment. If the beneficiary's 2001 and 2002 tax returns reflect income beyond what is shown on the Forms W-2, such information would have a clear and direct bearing on the beneficiary's eligibility. Despite the director's specific request for those returns, the petitioner responded only with a return from a different year. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.